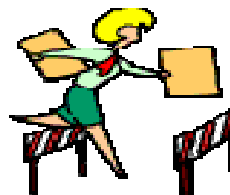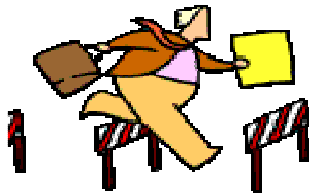# CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

City Council Meeting
09/16/2014
No. 2

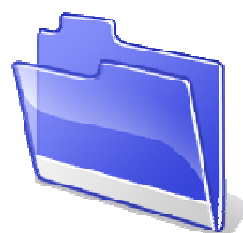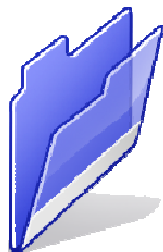# Attachments Related to Agenda

Item #2

Draft General Plan Housing Element

Two Letters Received

After Agenda Packet Distribution

September 15, 2014

TRANSMITTED VIA E-MAIL: freliford@ci.milpitas.ca.gov and mlavelle@ci.milpitas.ca.gov

TO: Felix Reliford, Principal Housing Planner, Mary Lavelle, City Clerk and Thomas C. Williams, City Manager
Mayor Esteves, Vice-Mayor Polanski and Members of the City Council

Cc: Commission Chair Mandal, Commission Vice-Chair Ciardella, and members of the Planning Commission

FROM: Nadia Aziz, Law Foundation of Silicon Valley; Julie Quinn, Housing Trust Silicon Valley; Teresa Martinez-Gonzales, Neighborhood Housing Services of Silicon Valley

Re: City of Milpitas City Council Meeting, September 16, 2014, Agenda Item XIV-2

Dear Mayor, Vice-Mayor, Councilmembers, and Commissioners:

The following preliminary comments on the City of Milpitas's ("City") Draft 2015-2023 Housing Element ("Housing Element") are offered by the Public Interest Law Firm and the Fair Housing Law Project (programs of the Law Foundation of Silicon Valley), the Non-Profit Housing Association of Northern California, and the Housing Trust of Silicon Valley[1] on behalf of low-income residents of Milpitas.   We appreciate your and the City's willingness to consider these comments but reserve the right to augment and change these comments as the process goes forward.

Public Participation
The City should do more to encourage public participation and to engage with all economic segments of the community in the development and update of the Housing Element.[2]   There were only two meetings were held for the public prior to the production of the draft Housing Element.[3]   There are only two meetings scheduled after the production of the draft Housing Element to illicit public input.

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[1]   PILF's mission is to protect the human rights of individuals and groups in Milpitas and San Mateo Counties who are underrepresented in the civil justice system.   PILF accomplishes its mission by leveraging the skills and resources of pro bono attorneys to provide high-quality representation in class action and impact litigation, advocacy in state and local government, and litigation support to local legal services programs.   PILF focuses its efforts on behalf of elders, youth, individuals with disabilities, those who are frequent victims of illegal discrimination, and those who have low incomes.   One of PILF's five litigation and advocacy priorities is to preserve affordable housing. The mission of FHLP is to ensure that all people may freely choose a place to live without regard to their race, color, religion, sex, age, national origin, sexual preference, marital status, source of income, operation of a licensed day care, disability, or whether they have children in their family.
[2] City of Milpitas, Draft Housing Element, p. 3, available at https://www.ci.milpitas.ca.gov/_pdfs/np_housingelement.pdf).
[3] Id.

We encourage the City to engage in more vigorous public outreach prior to the adoption of the Housing Element.   This outreach should be targeted at various community groups and stakeholders.   Meetings should be held in locations convenient for low- and moderate-income residents, and the City should ensure that the meetings are accessible to people with disabilities and people with limited English proficiency.   We also encourage the City to conduct one-on-one interviews with local community groups and stakeholders.

Review & Revise
The draft Housing Element does not adequately analyze the progress and outcomes from the prior Housing Element. The draft Housing Element states that housing units build exceeded the RHNA, but the City did not meet its obligations for very-low, low, or moderate income households.[4]

There is no analysis as to why the City failed to meet nearly 90% of its affordable housing obligations for low-income individuals under the past planning period's RHNA.[5]   The Housing Element does not list the locations and addresses of the units that were developed during the planning period.   The Housing Element only lists the units developed with RDA during the planning period, which is substantially less than the units Milpitas states that were permitted or developed during the planning period.[6]

We encourage the City to do a better analysis of the progress and outcomes from the prior Housing Element.   We encourage the City to analyze the reasons for the small number of units created during the last planning period, and to recommend programs that will encourage the development of affordable housing.

Housing Needs Assessment
Please see a separate comment letter submitted by the Non-Profit Housing Association (NPH).

Persons with Special Needs
The draft *exceptionally defines* "Special Needs Housing" populations and provides relevant Milpitas specific data with current resources for: large households, female-headed households, extremely low-income households, seniors, persons with disabilities, farmworkers, and homeless families and individuals.

The list of current resources for these groups, however, does not offer an analysis of the said resources and how they are helpful/not helpful to "special needs" groups or the percentage of the population that has access to these resources.

The draft might suggest how these "special needs" populations can get access to affordable rental and homeownership opportunities and how the City will create avenues through policy to get

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[4] Draft Housing Element, p. 6.
[5] Id.
[6] Draft Housing Element, p. 65.

these population groups housed. Policy, for example, can explore ways to support large families by encouraging builders to create more affordable housing opportunities with a higher bedroom count than the current vacancy status offers. Policy can also ensure that available affordable housing sites are near or adjacent to adequate services for these populations groups (high walk scores).

Supportive and/or service enriched affordable rental housing and BMR homeownership programs that provide direct service can serve as a way to target "special needs housing" populations like large households, female-headed households, seniors, etc. in a way that informs, educates, and provides access to homes.

Potential Governmental and Non-Governmental Restraints
- ### *Economic Displacement & Rent Burden*
We are greatly concerned with the economic displacement of low-income residents from the City of Milpitas.   There has been a 41% increase in rent in Milpitas since 2005 and that 44% of Milpitas renters face a rent burden.[7]   With no policies protecting low-income residents from rent increases or displacement, many low-income residents are being forced out of the City. The Housing Element has no analysis of the economic displacement of low-income individuals in Milpitas.   We believe that this economic displacement is a pressing issue that is only superficially addressed in the Housing Element. The Housing Element should do a deeper analysis of the economic displacement and recommend policies that will prevent displacement of low-income residents.

- ### *Community Resistance to Affordable Housing*
The Housing Element should do a further analysis of community resistance (NIMBYism --"Not-in-My-Back-Yard") as a constraint to the development of affordable housing in the City. However, the City's Draft Housing Element does not adequately address the effects of NIMBYism on the community.

- ### *Boomerang Funds*
The City of Milpitas declined to set-aside one-time former redevelopment "boomerang" funds for affordable housing. By doing so the City failed to take advantage of a match offered by Santa Clara County which would have resulted in close to $1.9 million for affordable housing. However, this is not addressed as a constraint to the development of affordable housing. The Housing Element should analyze the city's decision to not set aside boomerang funds as a constraint to the development of affordable housing.

Additionally, the City should include a program to commit a portion of the yearly tax increment funds they receive towards affordable housing.

At Risk Units
The inventory of affordable housing units lists several housing units without expiration dates and

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[7] Draft Housing Element, p. 29 and p. 33.

does not identify the type of subsidy, such as whether the units are part of the BMR program, LIHTC, or has some other subsidy. We encourage the City to describe the type of subsidies attached to each property and relook at the expiration dates to determine that the subsidies do not in fact have expiration dates.

Sites Inventory and Analysis
Please see a separate comment letter submitted by the Non-Profit Housing Association (NPH).

Qualified Objectives and Housing Programs:

We encourage the City to engage in robust, creative, and strategic programs that will encourage the development of affordable housing. In general, the qualified objectives and housing programs are general policies, with no specific time frames or specific actions. While the City has a density bonus ordinance that complies with state law, and is mentioned in the Housing Element as the main means for the City to develop affordable housing in the post-RDA era, we encourage the City to take more action to meet the affordable housing gap in Milpitas. The City met only 30% of its total RHNA obligation for very-low, low, and moderate income households, and of the total housing stock created in the planning period, only 7% was affordable housing units.[8]

Some of the suggested activities are described below:

- **Adopt a Housing Impact Fee**
We encourage the City establish as a program to adopt a Housing Impact Fee. The loss of redevelopment funds, as well as the *Palmer* decision, has severely limited the development of affordable housing. However, the draft version of the 2015-2023 Housing Element does not include any programs regarding the adoption of a housing mitigation fee. A lot of the affordable housing developed during the planning period was homeownership, and not rental housing. Most very-low income families cannot afford homeownership, and rely on rental housing as a source of affordable housing.

   Many local jurisdictions, such as Mountain View and most recently Emeryville and Daly City, have established housing impact fees to ameliorate the loss of RDA. Housing impact fees provide a continuous local funding source for the development of affordable housing. Therefore, we encourage the City to reintroduce a program in this Housing Element to adopt a Housing Impact Fee, and more specifically to undergo a Housing Impact Fee Nexus Study within the first year of the planning period.

- **Adopt Commercial Linkage Fee**
Similarly, we encourage the City to adopt a commercial linkage fee. The commercial linkage fee requires developers to ameliorate some of the housing impacts generated by new commercial development by requiring developers to pay fees for the development of affordable housing. In high-development areas like Milpitas, a commercial linkage fee will

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[8] Draft Housing Element, p. 6.

provide a continuous funding source for the development of affordable housing.   We recommend that the City of Milpitas do a Job-Housing Nexus Analysis within the first year of the planning period to assess the adoption of a commercial linkage fee.

- **Source of Income Protections for Section 8 Voucher Holders**

We encourage the City to enact an ordinance that would prohibit landlords from discriminating against Section 8 voucher holders.   As identified in the Housing Element, many extremely low-income and low-income residents in Milpitas rely on the Section 8 Housing Choice Voucher program to remain in Milpitas.   Unfortunately, many voucher holders have difficulty realizing the portability and flexibility that the voucher program is supposed to offer as many landlords refuse to rent to Section 8 voucher holders.   As there are no protections against this discrimination, many Section 8 voucher holders are forced to move out of high-opportunity areas like Milpitas.

Other cities, such as East Palo Alto, have enacted ordinances that include participation in Section 8 and other voucher programs as a prohibited form of source of income discrimination.   We encourage Milpitas to enact such an ordinance so that low-income section 8 voucher holders are able to find stable rental housing in Milpitas.

- **Enact a Rent Stabilization Ordinance**

One of the major challenges to affordability in Milpitas is the high rents, which continue to skyrocket.   There has been a 41% increase in rent in Milpitas since 2005 and that 44% of Milpitas renters face a rent burden.[9]   The City should enact a rent stabilization ordinance that would limit the amount that rents are allowed to increase.   A rent stabilization ordinance would allow low-income residents to remain in Milpitas for longer periods of times, as rents would increase gradually as opposed to the drastic rent increases of several hundred dollars and up that we see many of our clients getting.   Other jurisdictions have passed such ordinances.

- **Enact a Just Cause Eviction Ordinance**

A just cause eviction ordinance protects tenants from housing instability while allowing a landlord to evict a tenant for good reason.   Just cause eviction ordinances limit the reasons a tenant can get evicted, prohibiting landlords from simply giving no-cause notices as allowed by state law.   A just cause eviction ordinance increases housing stability and prevents displacement, especially for low-income residents.   Other Bay Area jurisdictions have such ordinances.

We would be happy to speak with you, as well as with City staff, to discuss these comments further. If you have any questions, please feel free to contact Nadia Aziz at (408) 280-2453.

Cc: Paul McDougall, HCD, via email to paul.mcdougall@hcd.gov

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[9] Draft Housing Element, p. 29 and p. 33.

September 15, 2014

Sent via email: freliford@ci.milpitas.ca.gov and mlavelle@ci.milpitas.ca.gov

To: Mayor Esteves, Vice-Mayor Polanski, and Councilmembers Giordano, Gomez, and Montano.
cc: Commission Chair Mandal, Commission Vice-Chair Ciardella, and members of the Planning Commission

Re: City of Milpitas City Council Meeting, September 16, 2014, Agenda Item XIV-2

Dear Mayor, Vice-Mayor, Councilmembers, and Commissioners:

On behalf of Non-Profit Housing Association of Northern California (NPH) and our 700 member organizations, I respectfully submit the following comments on the City's draft housing element (HE) for your consideration.

A.   Housing Needs Assessment

Between 2000 and 2010, the population of the City of Milpitas grew by 6.53%. In contrast, the City **grew the number of jobs by 11% in two years** (2010-2012). Employment growth within the City significantly outpaces residential growth.

Data collected by the UC Davis Center for Regional Change[1] demonstrates the extent of the mismatch between the quantity of low-wage jobs and the housing that's available to these workers. Specifically, UC Davis analyzed the mismatch between the number of low-wage jobs paying $15,000 per year versus the number of homes affordable to these workers, which at 30% of income amounts to $750 per month for rent.

The resulting jobs to housing fit (JHFIT) ratio shows that Milpitas has **9.85 low paying jobs for every affordable home** in the City. **Although 18.7% of jobs within the City pay very-low income wages, only 7.1% of the current housing stock is affordable to these workers.**

The draft housing element includes an analysis of the jobs to workers ration (Table 3.7) but does not provide any data on the quantify or housing characteristics of low-earning workers. The Longitudinal Employer Household Dynamics (LEHD) Origin-Destination Employment Statistics Dataset (LODES) collected and disseminated by the US Census tracks this data via the Workplace Area Characteristics file. This data can be downloaded here - http://lehd.ces.census.gov/data/

Continuing to grow the number of jobs in the City through commercial development without addressing the accompanying housing growth for those new employees exacerbates housing problems not only for the City but also for nearby cities and runs counter to the regional effort to reduce driving.

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[1] UC Davis data and methodology available at http://bit.ly/1p40cws

NPH strongly suggests the City include the following programs in the draft housing element:

- ***A program to track employment growth, by income or wage level, for the same period used to track population growth.***
- ***A program to monitor jobs housing fit (JHF) in the City for renters and homeowners. JHF is defined as the ratio of low-wage jobs (those paying $1,250 per month or less) to affordable rental (apartments that cost $750 per month or less) or affordable homes (owner-occupied or vacant for sale housing units at $150,000 or less).***
- ***A program to improve low wage jobs and affordable housing fit currently pegged at 9.85.***

B.   RHNA Progress

Based on our review of the City's Annual Progress Reports, it appears that the City's performance during the 2007-2014 planning period fell short of meeting the City's housing need, especially with respect to lower-income households, while significantly exceeding the above moderate income housing production allocation. Performance values shown as % of total RHNA for each affordability level:

- Very low income (0-50% AMI) - 49%
- Low income (51-80% AMI) - 26%
- Moderate (81-120% AMI) - 60%
- Above moderate income (120% AMI+) - 598%

Because of the existing deficit of homes available to those earning less than 80% of the area median income, the shortage of available land, and the continued employment growth in the coming decades[2], the City must incentivize and prioritize the production of housing affordable to all income segments, especially within the established Priority Development Area (PDA) and key transportation corridors.

NPH strongly suggests the City include the following programs in the draft housing element:

- ***A program to complete a yearly Annual Progress Report (APR) and a public meeting to discuss progress to date prior to submitting report to the California Department of Housing and Community Development.***
- ***A program to prioritize housing for very-low and low-income workers especially in key transportation corridors and as part of the Transit Oriented Development (TOD) Policy.***

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[2] Plan Bay Area projects that the number of jobs in the City will grow by as much as 28% between 2010 and 2040.

C.   Housing Resources

Low Income Housing Tax Credits (LIHTC) Scoring

Prior to their dissolution in 2011, cities relied on Redevelopment Agencies (RDA) to provide funds for affordable housing production. Since the dissolution of RDA, non-profit housing developers have had to rely on very competitive federal tax credits, namely the Low Income Housing Tax Credit (LIHTC), to finance a housing project affordable to those making less than 80% AMI. In order to qualify to apply for LIHTC, projects must be consistent with site and amenity criteria for public transportation and services/amenities.

Table 5-3 lists the opportunity sites designated to accommodate RHNA for lower income households. The 20 parcels selected are projected to accommodate 2,740 homes affordable to those making 80% of AMI or less. Seemingly exceeding the City's very low-, low-, and moderate-income allocation totaling 2,139 homes.

However, an analysis of LIHTC viability of the identified opportunity sites shows that only 3 out of the 20 parcels[3] identified score well against the LIHTC criteria. **The maximum feasible number of units that could be built through tax credits is 127 units, significantly below the 1,574 very low- and low-income units necessary**.

NPH strongly suggests the city include the following programs in the draft housing element:

- *Given the significant shortfall of viable opportunity sites, the City should identify other feasible parcels that are located within priority development areas, key transportation corridors, and key services.*
- *Adopt an affordable overlay zone for all identified opportunity sites.*

Financing Tools

The loss of redevelopment funds, as well as the *Palmer* decision, has severely limited the development of affordable housing across the region. Given the high costs of land and the overall market strength in the city not-for-profit developers cannot against market rate developers to acquire land for development.

The City of Milpitas declined to set-aside one-time former redevelopment "boomerang" funds for affordable housing. By doing so the City failed to take advantage of a match offered by Santa Clara County which would have resulted in close to $1.9 million for affordable housing. Given the significant dearth of funding for affordable housing and the very high need for affordable homes, the City should include a program to commit 20% of the yearly tax increment funds they receive towards affordable housing and identify other local sources of funding for affordable housing.

A commercial linkage fee requires developers to mitigate the ***affordable housing needs generated by new commercial development*** by requiring developers to pay fees for the development of affordable housing. In high-development areas like Milpitas, a commercial linkage fee will provide a continuous funding source for the development of affordable housing.

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[3] The 3 parcels that scored well against LIHTC are as follows: 1005 North Park Victoria Drive (4.85 acres); 154/166/174/196 S. Main Street (2.17 acres); and 209/227/195/187 S. Main Street (1.91 acres).

A housing impact fee requires developers to mitigate the *affordable housing need generated by building new market rate residential development*. Many local jurisdictions, such as Mountain View and most recently Emeryville and Daly City, have established housing impact fees to ameliorate the loss of RDA. Housing impact fees provide a continuous local funding source for the development of affordable housing.

At the September 10th Planning Commission meeting, commissioners called for the inclusion of a program to conduct residential and non-residential nexus studies. NPH strongly supports this recommendation and calls for the City Council to direct staff to include the following programs in the draft housing element:

- *A program to conduct a non-residential nexus study to lay the groundwork for a future commercial linkage fee.*
- *A program to conduct a residential nexus study to lay the groundwork for a future housing impact fee.*
- *A program to set aside 20% of annually recurring tax increment funds ("boomerang funds") for affordable housing.*

Land Use Tools

Research published by the Urban Land Institute demonstrates that there is an increased demand, across all affordability categories, to live closer to work and mass transit.[4] Given the increased demand to live in transit- and amenity-rich communities, it is **highly unlikely that any housing built without affordability protections will be affordable** to those earning very- or low-income wages.

Given the high need, affordable housing should be the first and highest priority when any kind of incentive (e.g. increased FAR or density) is provided in any development occurring within the City boundaries. This policy should not be limited to specific plan or precise plan areas.

At the September 10th Planning Commission meeting, commissioners called for creative zoning solution to ensure housing affordability. One such tool is the "Housing Overlay Zone" (HOZ) which is a zoning designation adopted as an overlay on top of existing zoning regulations. An HOZ tied incentives or exemptions (e.g. additional height or density or parking reductions) to the provision of affordable housing. Public Advocates and the East Bay Housing Organizations (EBHO) developed a HOZ Faq Sheet which is available for download at http://bit.ly/1sZAUQZ

In addition to exploring creative land use solutions, the City should identify publicly owned parcels, properties previously owned by the dissolved Redevelopment Agency, and brownfield sites that may be suitable for redevelopment and prioritize these for housing affordable to those earning 80% AMI or less.

NPH strongly suggests the city include the following programs in the draft housing element:

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[4] Jonathan D. Miller, 2012 Emerging Trends in Real Estate (Washington, D.C.: PwC and the Urban Land Institute, 2011), 1, http://chicago.uli.org/wp-content/uploads/2012/03/ET_US2012.pdf .

- *A program to conduct further research and a public meeting on a potential housing overlay zone, community benefits policy, or other creative land use and zoning solutions.*
- *A program to identify all publicly owned parcels and brownfield sites.*
- *A program to develop a policy to prioritize, require, or incentivize housing affordable to those making 80% AMI or less on public land.*

Thank you for the opportunity to provide comments on the city's housing element. Please feel free to contact me regarding any questions. I look forward to the City's response to the feedback and suggested revisions included in this letter.

Sincerely,

Pilar Lorenzana-Campo
Regional Policy Manager
Non-Profit Housing Association of Northern California
pilar@nonprofithousing.org
408.215.8925

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